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Supreme Court, U.S.
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No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

STEPHEN BEECHER &
B & B ELECTRICAL CONTRACTORS, INC.,
Petitioners,

v.

COMMISSIONER of the DEPARTMENT OF CONSUMER PROTECTION for CONNECTICUT,
EDWIN RODRIGUEZ, ET AL
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court for the State of Connecticut

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Petition for a Writ of Certiorari

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QUESTION PRESENTED

Whether the Appellate Courts of Connecticut erred in allowing a State administrative agency other than the one designated by the State Legislature and the Federal Government to enforce Davis-Bacon Act prevailing wage issues.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the Supreme Court of the State of Connecticut.

The petitioners here and appellants below are Stephen Beecher and B & B Electrical Contractors, Inc.

The appellees below and the respondents here are the Commissioner of Consumer Protection, an administrative agency of the State of Connecticut, Edwin Rodriguez; a Director within the Department of Consumer Protection, Richard Hurlburt; the Electrical Work Examining Board, a division of said Department of Consumer Protection, and Laurence Vallieres, a member and chairman of said Electrical Work Examining Board.

CORPORATE DISCLOSURE STATEMENT

Pursuant to 29.6 the petitioners state as follows:

The petitioner, B & B Electric Contractors, Inc. hereby discloses that it does not have any parent corporations and it does not have any publicly held company that owns 10% or more of the plaintiff's stock.

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OPINIONS BELOW

The opinion of the Supreme Court for the State of Connecticut, Doc. No. PSC-07-0236 and dated February 14, 2008 denying the petitioners' certification to appeal from the Appellate Court is not yet reported and is reprinted in the Appendix to this Petition at 1a.

The opinion of the Appellate Court for the State of Connecticut is reported at 104 Conn. App. 655 (2007) and is reprinted in the Appendix to this Petition at 2a -17a.

JURISDICTION

The Supreme Court for the State of Connecticut entered its order denying the Petition for Certification to appeal from the Appellate Court on February 14, 2008. This Court has jurisdiction under 28 U.S.C. section 1257.

STATUTES INVOLVED

This case involves provisions of the Davis Bacon Act 40 U.S.C. section 3141 *et seq*. as it applies to the several States under 42 U.S.C. section 6701 *et seq*. Otherwise known as the little Davis Bacon Act. The pertinent provisions are reproduced in the Appendix to this Petition 19a-22a.

STATEMENT OF THE CASE

This is an important case concerning prevailing wage construction projects that are performed for State and municipal governments with full or partial Federal funding. Resolution of the questions presented will determine the ability of Federal and State legislature to determine administration of prevailing wage enforcement pursuant to the Davis-Bacon Act without the State Courts diverting the mandated responsibilities to other administrative agencies. In California Division of Labor Standards Enforcement v. Dillingham Construction , 519 U.S. 316 (1997) This court upheld state laws regulating prevailing wages where congress had no intent to regulate the industry. Now comes the situation where congress has intended to regulate the prevailing wage laws and the state law complies with congressional intent and, now, the state court has diverted the responsibilities stated in state and federal laws by giving policing authorities under the Davis Bacon Act to administrative agencies other than those designated by statute. see appendix 22a-30a.

The petitioners, Stephen Beecher ("Beecher") and B & B Electrical Contractors, Inc. ('B & B") filed an administrative appeal to the Superior Court from the decision of a hearing conducted by the respondent, State Electrical

Work Examining Board ("the Board"), a division of the Department of Consumer Protection for the State of Connecticut. The decision of the Board was based upon , inter alia, allegations of violations of the Prevailing Wage laws, also known as the Little Davis Bacon Act, on a local public works project in the State of Connecticut. These laws stem from the Federal laws known as the Davis Bacon Act. The legislature for the State of Connecticut designated the Department of Labor for the State of Connecticut as the administrative agency to enforce Prevailing Wage laws as aforementioned. The State Department of Labor had previously addressed the same Prevailing Wage violations as alleged by the Board. The State Department of Labor enforced the prevailing wage laws in that instance and fined the petitioners approximately Five Thousand Dollars. The Board found the petitioners in violation prevailing laws after a hearing and fined the petitioners in excess of One and one half million dollars collectively as well as administering other sanctions concerning electrical contracting license suspensions.

The Superior Court for the State of Connecticut upheld the administrative decision of the Board. The petitioners then appealed the Superior Court decision to the Appellate Court for the State of Connecticut. For the first time at this appellate court the petitioners raised the issue of subject matter

jurisdiction of the Board. The petitioners argued that the Board, a division of the State Department of Consumer Protection, did not have jurisdiction to hear prevailing wage violations on public works projects because the State Department of Labor was the sole designated agency, by legislature, to enforce prevailing wage laws in Connecticut. The Appellate Court for the State of Connecticut found that the Board had concurrent jurisdiction with the Department of Labor to enforce prevailing wage laws and further, sua sponte, bestowed authority upon the Board to enforce work place safety issues for electricians, a responsibility exclusively vested in the Federal Government under the Occupational Safety and Health Act, 29 USC § 651. see appendix 17a-19a.

The issue before us is, therefore, whether the board had the authority to sanction Beecher for his misconduct in misclassifying several of his electrical employees and permitting these employees to perform work that they were not licensed to perform. Specifically, the plaintiffs assert that Beecher's misrepresentation of these workers' credentials falls within the exclusive jurisdiction of the department of labor because § 31-53(f) requires public works employers to keep, maintain and certify records relating to their employees and to file such records with that department. In

their view, although the board concededly has the authority to regulate the "pursuit, practice and standards" of electric employees "for the preservation of the public safety,"10 that authority does not extend to policing of the misclassification of employees on records filed with the department of labor.11We note that, apart from a forceful recital of the statutory texts, the plaintiffs again have offered no reasoned support for their argument of statutory exclusivity. In particular, they have not responded in depth to the board's counterargument that, although filing of payroll records with the department of labor assists that department's enforcement of its "prevailing wage" mandate; see Electrical Contractors, Inc. v. Tianti, 223 Conn. 573, 593, 613 A.2d 281 (1992); such filings also may serve other legitimate governmental purposes. We find the board's argument persuasive. The board cites applicable statutes and regulations that unequivocally confer on the board the authority to require electrical contractors to provide assurance that apprentices perform their work with proper supervision both for their health and safety and for the health and safety of the general public. General Statutes § 20-332 (b) authorizes "[t]he Commissioner of Consumer Protection, with the advice and assistance of the appropriate board [to] adopt regulations . . . for the pursuit, practice and

standards of the occupations within the jurisdiction of the boards for the preservation of the public safety . . . ." Pursuant to that authority, § 20-332-15a of the Regulations of Connecticut State Agencies permits the appropriate board to discipline an electrical contractor who permits apprentices to undertake work at the job site without proper supervision.12 In furtherance of the public policy enunciated by the statute and the regulation, General Statutes § 20-334 (c) authorizes a board to impose sanctions on a contractor who "knowingly makes false, misleading or deceptive representations regarding his work or violates the regulations adopted under this chapter . . . ." Finally, General Statutes § 20-341 (b) provides that "[t]he . . . board may, after notice and hearing, impose a civil penalty on any [licensee] who violates any of the provisions of this chapter . . . or the regulations adopted pursuant thereto. . . ." See Appendix to the Petition 6a-9a.

The Supreme Court for the State of Connecticut denied the petition for certification for the issue of jurisdiction and authority of the Board as found by the Appellate Court.

The petitioner argues that the Board cannot enforce the prevailing wage statutes in any way. They further argue that the public safety issues referenced by the State Appellate Court

are solely related to the work performed i.e. was the electrical wiring installation so shoddy that it was a fire hazard? Further, any reference to false statements under the purview of the Board would be limited electrical work, i.e. why did you charge the customer for the installation of 10 electrical outlets when you only installed 5 outlets? Any allegation of making a false statement on a certified payroll record submitted pursuant to the Prevailing Wage laws are enforced only under the Davis Bacon Act and the State Department of Labor.

Because Prevailing Wage laws are limited to public works projects and the Board is not limited to enforcing electrical work on government projects, it is logical to conclude that the Board only has authority over work and issues that are common to all aspects of public and private construction.

Review is needed to avoid duplicity of administration of Federally mandated and financed programs by the States. Further, it will prevent State Courts from altering the plans of State legislature to carry out the mandates of the Federal government. Still further, it will prevent different State agencies from attempting to usurp enforcement powers of Federally mandated programs from other State agencies in attempts to enhance their own powers. Still further, it will prevent inefficiency in government as the implementation of overseeing Prevailing Wage laws requires substantial manpower in investigation,

apprenticeship programs, administrative and enforcement and to allow duplicate enforcement would be inefficient. Finally, it will prevent non-designated agencies from establishing their own enforcement rules in lieu those enacted by legislature specifically for the designated agencies.

If the Appellate Court decision is left undisturbed it will create a means for State administrative agencies to utilize the court system to empower them to administer Federally funded programs in lieu of those agencies designated by legislature.

A. FACTUAL BACKGROUND

The plaintiff, Beecher, held an E-1 Electrical Contractors License in Connecticut and the plaintiff, B & B Electrical Contractors, Inc. was in the business of performing electrical work and was registered in Connecticut to so perform this work. On January 4, 1999, Beecher, on behalf of B & B, contracted to perform electrical work at the Bullard Havens Regional Vocational Technical School ("Bullard Havens"), a State owned and operated facility, in Bridgeport, Connecticut . This project was a State project which was partially funded by federal funds thus making it a project that needed to conform with prevailing wage laws pursuant to the Davis Bacon Act. B & B performed work on the Bullard Havens project from March 1999 to October 2001. During the

time that they performed work at Bullard Havens, Beecher and B & B completed a certified payroll for each week in which B & B performed work on the project and mailed them to the State Department of Labor pursuant to C.G.S. section 31-53 et seq and the Davis Bacon Act Pursuant to such certified payrolls, Beecher signed an attestation that such payroll records were true and accurate to the best of his knowledge and belief.

Several complaints were brought before the defendant Electrical Board against the plaintiffs that resulted in administrative hearings. The Electrical Board sits as "judge" and "jury" in these hearings. Further, the Board interprets the Connecticut General Statutes to determine if it has subject matter jurisdiction over a case. It has unfettered control over this issue. So the Board, in essence a voluntary organization composed of ten electricians, determines what it can hear and decide. Although the plaintiff pointed out to the Appellate Court that the statutory interpretation of the Board's jurisdiction should be limited to "electrical work" as defined in C.G.S. section 20-330 and that the Board was outside of its jurisdiction in finding that plaintiffs violated Prevailing Wage laws, the Appellate Court still found that the Board had jurisdiction. However, in reading the Appellate Court's decision, it finds that the Board had jurisdiction by either ignoring the record of the administrative hearing or determining that the record and findings of the

Board to be irrelevant which, in determining subject matter jurisdiction it has a right to do. Clearly the Board fined the plaintiffs enormous amounts of money for misclassifying employees on certified payrolls and falsifying certified payrolls, this is on the record and not disputed by the Board. These certified payrolls are accountings that are submitted exclusively to the Department of Labor pursuant to the Davis-Bacon Act, that is to say for government projects only. Further, classification, or misclassification of employees is unique to the Davis Bacon Act and within the purview of the State Department of Labor. The Appellate Court found that the certified payrolls had another purpose which allows the Board to levy fines based upon improper or false filings of these records with the Department of Labor. This is a dangerous decision by the Appellate Court. The prevailing wage laws do not just effect electricians but all laborers that work on government projects, including, but not limited to plumbers, HVAC workers, mechanical trade, non-trade workers and low voltage technicians. Under the Department of Labor a uniform procedure for addressing prevailing wage laws exists and from it comes decisions of the courts due to appellate issues. If the Electrical Board is given jurisdiction over the issues of determining falsity of these records and levying fines for violations of prevailing wage laws, then there are separate and distinct decisions of law to be judicially reviewed within the scope of the Electrical Board's interpretation, not the Department of

Labor. This has a further snow ball effect in that now the Appellate Court will also allow the Plumber's Examining Board, Heating and Cooling Examining Board, Fire Safety Sprinkler Examining Board and Elevator Installation Boards, all equivalent to the Electrical Board, to interpret prevailing wage laws in their own unique ways. This leads to chaos and logical reasoning would prevent this court from conferring jurisdiction upon the Electrical Board for this purpose. Further, the Appellate Court, under plenary review, in upholding the subject matter jurisdiction question, has conferred upon the Board additional jurisdiction concerning workplace safety of electricians and apprentices. In doing so it has displaced OSHA, a Department of Labor responsibility, as the sole authority for workplace safety. Again, this newly bestowed jurisdiction allows for separate and distinct decisions of law to be judicially reviewed within the scope of the Electrical Board's interpretation, not the Department of Labor. Again this has the same snowball effect as previously mentioned and lends itself to chaos concerning workplace safety standards.

REASONS FOR GRANTING THE PETITION

The reason for granting the petition is to prevent the State court systems from being

used by State agencies to usurp powers and authorities to regulate prevailing wage laws in government construction projects that have been delegated by federal and state laws to other State agencies pursuant to the Davis -Bacon Act. These projects are large construction projects that bring with them many local jobs which are highly sought after by trade union and non-union contractors alike. These projects can influence union membership and the regulatory agencies are often platforms for problems that arise from competing contractors seeking to gain advantages in bidding for these projects and also performing work pursuant to the contracts. The situation starts with several complaints being brought before the defendant Electrical Board, a part of the State Department of Consumer Protection, against the plaintiffs, B & B and Beecher, which result in administrative hearings. Some of the complaints are based upon violations of the prevailing wage laws concerning federally funded government construction projects and regulated by the State Department of Labor through the Davis Bacon Act. The Electrical Board sits as "judge" and "jury" in these hearings. Further, the Electrical Board interprets the Connecticut General Statutes to determine if it has subject matter jurisdiction over a case. It has unfettered control over this issue. So the Electrical Board, in essence, composed of ten electricians, four of which must be union electricians by law, determines what it can hear and decide. After a hearing on the complaints, the Electrical Board found that the

plaintiffs violated certain aspects of the prevailing wage laws and fined the plaintiffs enormous amounts of money for misclassifying employees on certified payrolls and falsifying certified payrolls, this is on the record and not disputed by the Board. The decision of the Electrical Board was upheld in the administrative appeal. That decision was appealed to the Appellate Court. For the first time the plaintiffs raised the issue of subject matter jurisdiction. The plaintiffs pointed out to the Appellate Court that the statutory interpretation of the Electrical Board's jurisdiction should be limited to "electrical work" as defined in C.G.S. section 20-330 and that the Board was outside of its jurisdiction in finding that plaintiffs violated Prevailing Wage laws, the Appellate Court still found that the Board had jurisdiction. These certified payrolls are accountings that are submitted exclusively to the Department of Labor pursuant to the Davis-Bacon Act, that is to say, for federally funded government projects only. Further, classifications of employees on these certified payrolls are exclusive to the filings pursuant to the Davis Bacon Act. The Appellate Court found that the certified payrolls had another purpose which allows the Electrical Board to levy fines based upon improper or false filings of these records with the Department of Labor.

This is a dangerous decision by the Appellate Court. The prevailing wage laws do not just effect electricians but all laborers that work on virtually all government projects, including, but

not limited to plumbers, HVAC workers, mechanical trade, non-trade workers and low voltage technicians. Under the Department of Labor a uniform procedure for addressing prevailing wage laws exists and from it comes decisions of the State courts by way of the administrative appeal procedure. If the Electrical Board is given concurrent jurisdiction with the State Department of Labor to police prevailing wage laws and levy separate and additional fines for these violations, then there are separate and distinct administrative agency decisions to be judicially reviewed within the realm of prevailing wage laws. Those decisions would be from the State department of labor, whose decisions are based upon the Davis Bacon Act pursuant to the enacted State legislation through the Little Davis Bacon Act and independently from the Electrical Board, a part of the State department of consumer protection, whose decisions are not based upon the Davis Bacon Act. This has a further snow ball effect in that now the Appellate Court decision will also allow the Plumber's Examining Board, Heating and Cooling Examining Board, Fire Safety Sprinkler Examining Board and Elevator Installation Boards, all equivalent to the Electrical Board, and part of the State department of consumer protection to interpret prevailing wage laws in their own unique ways. This leads to chaos and logical reasoning would prevent this court from allowing the Electrical Board to exploit the State judicial system for the purpose of usurping these powers. Further, the Appellate Court, under

plenary review, in upholding the subject matter jurisdiction question, has conferred upon the Electrical Board additional jurisdiction concerning workplace safety of electricians and apprentices. In doing so it has displaced OSHA, a U.S. Department of Labor responsibility, as the sole authority for workplace safety. Again, this newly bestowed jurisdiction allows for separate and distinct decisions of law to be judicially reviewed within the scope of the Electrical Board's interpretation, not that of the U.S. Department of Labor. Again this has the same snowball effect as previously mentioned and lends itself to chaos concerning workplace safety standards.

CONCLUSION

The writ for certiorari should be granted.

Respectfully submitted,

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APPENDIX

SUPREME COURT

STATE OF CONNECTICUT

NO. PSC-07-236

Stephen Beecher, et al

v.

State Electrical Work Examining Board

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the plaintiffs for certification to appeal from the Appellate Court (104 Conn. App. 655 [AC 27856]), it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT

ALAN M. GANNUSCIO
ASSISTANT CLERK-APPELLATE

Dated: 2/14/08
Notice sent: February 15, 2008

STEPHEN BEECHER ET AL. *v.* STATE ELECTRICAL WORK EXAMINING BOARD
(AC 27856)

DiPentima, McLachlan and Peters, Js.

Argued September 6—officially released December 4, 2007

(Appeal from Superior Court, judicial district of New Britain, J. Fischer, J.)

Richard M. Franchi, for the appellants (plaintiffs).

Robert W. Clark, assistant attorney general, with whom, on the brief, was *Richard Blumenthal*, attorney general, for the appellee (defendant).

Opinion

PETERS, J. In this administrative appeal, an electrical subcontractor and his company on a public works project appeal from sanctions imposed on them by the state electrical work examining board1 for misconduct in the workplace, including the improper classification and employment of electrical apprentices. They have raised two issues of statutory construction. Their primary claim is that the board lacked the authority to impose these sanctions because, in their view, General Statutes § 31-53 vests exclusive jurisdiction over misclassification of workers in the commissioner of labor.2 Their secondary claim is that the board violated their statutory and constitutional rights to due process by failing to afford them the compliance hearings prescribed by General Statutes § 4-182 (c).3 The trial court rejected both claims. We agree and affirm the courts' judgment dismissing the plaintiffs' administrative appeal.

On March 18, 2005, the plaintiffs, Stephen Beecher and B & B Electrical Contractors, Inc. (B & B), filed a petition to appeal from two orders of the defendant, the state electrical work examining board (board). The orders incorporated the board's findings that the plaintiffs repeatedly had violated General Statutes §§ 20-334,20-341 and 21a-94 and corresponding administrative regulations. The trial court held that the board had proven its factual allegations and had afforded the plaintiffs the procedural rights to which they were entitled. Accordingly, the court rejected the plaintiffs' contentions that the board had acted improperly in revoking Beecher's electrical license and in imposing civil penalties on both plaintiffs. The plaintiffs have appealed.

The presently undisputed findings of the board establish the following factual background for the plaintiffs' appeal. Beecher was the holder of an unlimited electrical contractor license and the president of B & B. The plaintiffs were the subcontractors for electrical work at the Bullard Havens Regional Vocational Technical High School (Bullard Havens) in Bridgeport.

In breach of his contract obligations, Beecher installed electrical wiring at Bullard Havens that was not new and unused. Concluding that this conduct was unethical, the board revoked Beecher's electrical license and fined him $3000. The board took no action against B & B with respect to the improper wiring.

Subsequent to its inquiry into the wiring used at Bullard Havens, the board broadened its investigation of the plaintiffs' performance by inquiring into their use and reporting of electrical apprentices. The board determined that the plaintiffs had permitted four apprentices to perform electrical work without proper supervision and had misclassified them on certain payroll records. Because of this misconduct, the board imposed civil penalties of $1,263,500 on Beecher and $800,500 on B & B.

Without disputing the validity of the board's adverse factual findings, the plaintiffs maintain that the court improperly dismissed their administrative appeal as a matter of law. In their view, two statutes, §§ 31-53 (f) and 4-182 (c), deprived the board of jurisdiction to adjudicate most of the issues6 that led to the sanctions imposed on them. Like the trial court, we are not persuaded.

I

In their principal argument for reversal of the judgment of the trial court, the plaintiffs maintain that the penalties imposed by the board on Beecher for misclassification and misuse of electrical apprentices on public works projects were improper as a matter of statutory construction. They contend that the legislature has conferred sole authority to sanction such employer misconduct on the department of labor to the exclusion of the department of consumer protection, which is the board's parent agency. We are not persuaded.

The trial court rejected the plaintiffs' argument because, in the absence of any statutory analysis on their part, it had not been adequately briefed. Nonetheless, the board does not dispute the plaintiffs' contention that they have the right, on appeal, to raise an issue relating to the board's subject matter jurisdiction to impose substantial penalties on them. "Administrative agencies [such as the board] are tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon the validity of the statutes vesting them with power and they cannot confer jurisdiction upon themselves.
. . . [I]t is clear that an administrative body must act strictly within its statutory authority, within constitutional limitations and in a lawful manner. . . . It cannot modify, abridge or otherwise change the statutory provisions, under which it acquires authority unless the statutes expressly grant it that power."
(Internalquotation marks omitted.) *Figueroa* v. *C & S BallBearing*, 237 Conn. 1, 4, 675 A.2d 845 (1996). Judicial review of a state agency's interpretation of the governing statutes and regulations is particularly appropriate when, as in this case, that interpretation has not previously been subjected to judicial scrutiny. *SouthernNew England Telephone Co.* v. *Cashman*, 283 Conn.644, 650, 931 A.2d 142 (2007).8 The plaintiffs are, therefore, entitled to a plenary review of the merits of their argument as a matter of law. See id.

The plaintiffs maintain that, in enacting § 31-53,9 the legislature designated the department of labor as the one and only administrative agency authorized to adjudicate issues relating to payment of prevailing wages and certification of payroll records. In their view, § 31- 53 (f) plainly manifests the legislature's intention that the department of labor "is the all encumbering authority over prevailing wages and certified payroll records . . . ."

According to the plaintiffs, the jurisdiction conferred by § 31-53 on the department of labor necessarily encompasses the authority to preempt the exercise of jurisdiction over any and all issues relating to misclassification of employees by other administrative agencies, such as the board.

The plaintiffs emphasize that, in this very case, the department of labor cited and fined B & B for failing to pay prevailing wages. As the board observes, however, B & B has no standing to pursue the present claim of jurisdictional error because, unlike the department of labor, the *board* never imposed any civil penalties on B & B for misclassification. The record is clear that B & B was penalized only for permitting an employee to *perform* electrical work while not licensed or registered.

B &B has failed to proffer any reasoned argument to establish that, as a jurisdictional matter, this misconduct is the functional equivalent of a failure to pay prevailing wages.

The issue before us is, therefore, whether the board had the authority to sanction Beecher for his misconduct in misclassifying several of his electrical employees and permitting these employees to perform work that they were not licensed to perform. Specifically, the plaintiffs assert that Beecher's misrepresentation of these workers' credentials falls within the exclusive jurisdiction of the department of labor because § 31-53 (f) requires public works employers to keep, maintain and certify records relating to their employees and to file such records with that department. In their view, although the board concededly has the authority to regulate the "pursuit, practice and standards" of electric employees "for the preservation of the public safety,"11 that authority does not extend to policing of the misclassification of employees on records filed with the department of labor.11

We note that, apart from a forceful recital of the statutory texts, the plaintiffs again have offered no reasoned support for their argument of statutory exclusivity.

In particular, they have not responded in depth to the board's counterargument that, although filing of payroll records with the department of labor assists that department's enforcement of its "prevailing wage" mandate; see *Electrical Contractors, Inc.* v. *Tianti*, 223 Conn. 573, 593, 613 A.2d 281 (1992); such filings also may serve other legitimate governmental

purposes. We find the board's argument persuasive.

The board cites applicable statutes and regulations that unequivocally confer on the board the authority to require electrical contractors to provide assurance that apprentices perform their work with proper supervision both for their health and safety and for the health and safety of the general public. General Statutes § 20-332 (b) authorizes "[t]he Commissioner of Consumer Protection, with the advice and assistance of the appropriate board [to] adopt regulations . . . for the pursuit, practice and standards of the occupations within the jurisdiction of the boards for the preservation of the public safety . . . ." Pursuant to that authority, § 20-332-15a of the Regulations of Connecticut State Agencies permits the appropriate board to discipline an electrical contractor who permits apprentices to undertake work at the job site without proper supervision.12 In furtherance of the public policy enunciated by the statute and the regulation, General Statutes § 20-334 (c) authorizes a board to impose sanctions on a contractor who "knowingly makes false, misleading or deceptive representations regarding his work or violates the regulations adopted under this chapter . . . ." Finally, General Statutes § 20-341 (b) provides that "[t]he . . .board may, after notice and hearing, impose a civil penalty on any [licensee] who violates any of the provisions of this chapter

. . . or the regulations adopted pursuant thereto. . . ."

In response to this panoply of legislative and regulatory support for the board's actions, the plaintiffs simply reiterate their bald claim that, regardless of the text of the statutes and the regulations, board authority over their misconduct "is certainly not consistent with the statutory scheme as stated in [§ 31-53] et seq." Like the trial court, we find this argument unpersuasive.13

II

The plaintiffs' second contention is that the board lacked the authority to impose any sanctions on them because the board failed to give them the notices and failed to conduct the compliance hearings guaranteed to them by § 4-182. That statute provides in relevant part that "[n]o revocation . . . of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. . . ." General Statutes § 4-182 (c). Applying the principles enunciated in *Tele Tech of Connecticut Corp.* v. *Dept. of Public Utility Control*, 270 Conn. 778, 855 A.2d 174 (2004), the trial court held that, viewed in its entirety, the administrative record demonstrated that the board had honored Beecher's statutory

and constitutional rights to due process.14 We agree.

The court's opinion recites the procedural history. On three separate occasions, in August and October, 2003, and March, 2004, Beecher and his lawyer attended compliance hearings to respond to allegations that Beecher had performed incompetent or negligent electrical work and that he had misclassified and failed to supervise electrical apprentices. With respect to these hearings, the board complied fully with § 4-182. Subsequently, on April 2, 2004, the board informed Beecher's attorney that it had received additional information that Beecher had violated § 20-334 and its corresponding regulation by having been named in a court settlement for falsifying certified payrolls and time cards and for a citation for failing to pay prevailing wages. Although this letter advised the plaintiffs that proof of such violations might be grounds for additional sanctions and gave them the opportunity to respond, the board did not conduct a further compliance hearing. Instead, on April 15, 2004, the board began administrative proceedings by filing administrative complaints against the plaintiffs. As the trial court carefully documented in its memorandum of decision, the board held four administrative hearings between May and September, 2004, all of which were attended by Beecher and his counsel. These administrative proceedings addressed both the charges for which

compliance hearings had been held and those for which compliance hearings had not been held. Beecher has never claimed that the board impeded, in any way, his ability fully to present his defenses to the charges filed against him.

The court found that Beecher had been given ample notice of the charges against him and had had a sufficient opportunity to be heard. Applying the principles enunciated in *Tele Tech of Connecticut Corp.* v. *Dept.of Public Utility Control*, supra, 270 Conn. 778, it held that, even if there had not been strict compliance with § 4-182 (c), Beecher could not prevail because he did not establish that this error had prejudiced his substantial rights.

In his appeal to this court, although Beecher alludes to his disagreement with the trial court's findings of fact, he has briefed only two related issues of law. He argues that, because the board did not hold a compliance hearing with respect to some of the charges against him, the board (1) did not have subject matter jurisdiction to adjudicate any of the charges and (2) violated his rights to due process. Both issues warrant plenary review by this court. See *Wheelabrator Lisbon, Inc.* v. *Dept. of Public Utility Control*, 283 Conn. 672, 685, 931 A.2d 159 (2007); *State* v. *Kirby*, 280 Conn. 361, 378, 908 A.2d 506 (2006).

As the trial court held, Beecher's claims of illegality depend on a construction of § 4-182 that our Supreme Court has squarely rejected. In *Tele Tech of Connecticut Corp.* v. *Dept. of Public*

Utility Control, supra, 270 Conn. 778, the court held that (1) failure to comply with the provisions of § 4-182 (c) did not deprive an administrative agency of subject matter jurisdiction; id., 793; (2) the requirement of § 4-182 (c) that licensees have an opportunity to show compliance does not require a separate hearing or an opportunity for a hearing prior to the revocation of a license; id., 807; and (3) even if an agency failed to provide adequate notice prior to the initiation of administrative hearings, a licensee cannot establish that such a procedural error is prejudicial unless the administrative hearing failed to afford the licensee an adequate opportunity to offer evidence militating against the agency's adverse action. Id., 814–15.

Our Supreme Court's decision in *Tele Tech of ConnecticutCorp.* mandates affirmance of the trial court's judgment in this case. The board had jurisdiction to decide as it did. In view of the extensive administrative hearings that Beecher attended with his attorney, the court had the authority to decide that the board's failure to hold a compliance hearing did not deprive Beecher of his statutory or constitutional rights.

The judgment is affirmed.

In this opinion the other judges concurred.

1 The state electrical work examining board is an agency of the department of consumer protection.

2 General Statutes § 31-53 provides in relevant part: "(a) Each contract for the construction, remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project by the state or any of its agents, or by

any political subdivision of the state or any of its agents, shall contain the following provision: 'The wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (h) of this section, shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day.'

* * *

"(f) Each employer subject to the provisions of this section or section
31-54 shall (1) keep, maintain and preserve such records relating to the wages and hours worked by each person performing the work of any mechanic, laborer and worker and a schedule of the occupation or work classification at which each person performing the work of any mechanic, laborer or worker on the project is employed during each work day and week in such manner and form as the Labor Commissioner establishes to assure the proper payments due to such persons or employee welfare funds under this section or section 31-54, regardless of any contractual relationship alleged to exist between the contractor and such person, and (2) submit monthly to the contracting agency a certified payroll that shall consist of
a complete copy of such records accompanied by a statement signed by the employer that indicates (A) such records are correct; (B) the rate of wages paid to each person performing the work of any mechanic, laborer or worker and the amount of payment or contributions paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (h) of this section, are not less than the prevailing rate of wages and the

amount of payment or contributions paid or payable on behalf of each such person to any employee welfare fund, as determined by the Labor Commissioner pursuant to subsection (d) of this section, and not less than those required by the contract to be paid; (C) the employer has complied with the provisions of this section and section 31-54; (D) each such person is covered by a workers' compensation insurance policy for the duration of such person's employment, which shall be demonstrated by submitting to the contracting agency the name of the workers' compensation insurance carrier covering each such person, the effective and expiration dates of each policy and each policy number; (E) the employer does not receive kickbacks, as defined in 41 USC 52, from any employee or employee welfare fund; and (F) pursuant to the provisions of section 53a-157a, the employer is aware that filing a certified payroll which the employer knows to be false is a class D felony for which the employer may be fined up to five thousand dollars, imprisoned for up to five years, or both. This subsection shall not be construed to prohibit a general contractor from relying on the certification of a lower-tier subcontractor, provided the general contractor shall not be exempted from the provisions of section 53a-157a if the general contractor knowingly relies upon a subcontractor's false certification. Notwithstanding the provisions of section 1-210, the certified payroll shall be considered a public record and every person shall have the right to inspect and copy such records in accordance with the provisions of section 1-212. The provisions of subsections (a) and (b) of section 31-59 and sections 31-66 and 31-69 that are not inconsistent with the provisions of this section or section 31-54 apply to this section. Failing to file a certified payroll pursuant to subdivision (2) of this subsection is a class D felony for which the employer may be fined up to five thousand dollars, imprisoned for up to five years, or both."

3 General Statutes § 4-182 (c) provides in relevant part: "No revocation . . . of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which

warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. . . ."

4 General Statutes § 20-334 (a) provides in relevant part: "No person shall engage in, practice or offer to perform the work of any occupation subject to this chapter in this state unless such person has first obtained a license as provided in section 20-333 . . . and is subject to all of the regulations adopted under this chapter for the purpose of governing apprenticeship training . . . ."

General Statutes § 20-341 (b) provides in relevant part: "The appropriate examining board may, after notice and hearing, impose a civil penalty on any person . . . who wilfully employs or supplies for employment a person who does not have such a license or certificate . . . or who violates any of the provisions of this chapter, chapter 394 or chapter 482 or the regulations adopted pursuant thereto. Such penalty shall be in an amount not more than one thousand dollars for a first violation of this subsection, not more than one thousand five hundred dollars for a second violation and not more than three thousand dollars for each violation of this subsection occurring less than three years after a second or subsequent violation of this subsection, except that any individual employed as an apprentice but improperly registered shall not be penalized for a first offense."

5 Pursuant to General Statutes § 20-341 (b), the board had the authority to impose a penalty of $3000 for each of the misclassified employees for each day that each worked at the job site. Other than arguing that the board had no authority whatsoever to impose any penalty for misclassification of the plaintiffs' employees, the plaintiffs have not challenged either the calculation of the penalties imposed by the board or the propriety of the statutory provision permitting the board to impose, without limitation, a separate penalty for each day of violation. Although the plaintiffs charge the board with vindictiveness because its composition included members who were the plaintiffs' business competitors, the plaintiffs

have not argued that the composition of the board violated the applicable statutory guidelines set out in General Statutes § 20-331 (b) or that this statute deprived them of their constitutional rights to due process. Disqualification of administrative adjudicators for bias requires a factual showing of actual bias or of circumstances indicating "a probability of . . .bias too high to be constitutionally tolerable." (Internal quotation marks omitted.) *Rado* v. *Board of Education*, 216 Conn. 541, 556, 583 A.2d 102 (1990). The plaintiffs did not endeavor to make such a showing.

6 The plaintiffs do not dispute the board's authority to adjudicate Beecher's failure to install new wiring.

7 The maximum penalties that might have been imposed by the commissioner of labor pursuant to § 31-53 (b) are considerably less than those that were imposed by the board in this case.

8 The board does not claim that its interpretation of the governing statutes reflects a long-standing practice that warrants deference as a "formally articulated interpretation of a statute when that interpretation is both time tested and reasonable." See *Longley* v. *State Employees Retirement Commission*, 284 Conn. 149, 166, 931 A.2d 890 (2007).

9 See footnote 2.

10 See General Statutes § 20-332 (b).

11 The board asserts, as a matter of statutory construction, that Beecher need not have filed documentation about his employees with the department of labor, but it is undisputed that in this case Beecher did so.

12 Section 20-332-15a (d) of the Regulations of Connecticut State Agencies provides in relevant part: "Any person who encourages or permits an apprentice or helper to so engage in the work or occupation for which a license is required without direct supervision shall also be subject to appropriate disciplinary action. The contractor who obtains the permit for the work for which a license is required shall be deemed to have encouraged or permitted

the apprentice or helper to work without direct supervision for the purpose of disciplinary action by the appropriate board."

13 Because the plaintiffs have rejected the board's public and worker safety argument out of hand, they have made no effort to unbundle the merits of the package of penalties imposed on them. They have not raised any separate question, therefore, about the validity of the board's decision to impose additional penalties on them for misconduct for which they already had been sanctioned by other governmental entities.

14 As the board notes, this claim concerns only Beecher and not B & B because the statute imposes specific procedural requirements only on administrative proceedings with respect to license revocations. As a corporation, B & B did not have, and could not have had, an electrical license.

STATUTES INVOLVED

29 USC § 651. Congressional statement of findings and declaration of purpose and policy

(a) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and

healthful working conditions and to preserve our human resources—

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under this chapter;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health

problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;
(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;
(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;
(9) by providing for the development and promulgation of occupational safety and health standards;
(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;
(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this chapter, to improve the administration and enforcement of State occupational safety and health laws, and to

conduct experimental and demonstration projects in connection therewith;
(12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this chapter and accurately describe the nature of the occupational safety and health problem;
(13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

40 USC § 3141. Definitions

In this subchapter, the following definitions apply:
(1) Federal government.— The term "Federal Government" has the same meaning that the term "United States" had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494 (known as the Davis-Bacon Act).[1]
(2) Wages, scale of wages, wage rates, minimum wages, and prevailing wages.— The terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include—
(A) the basic hourly rate of pay; and
(B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or

subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of—
(i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and
(ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.

42 USC § 6701. Definitions

As used in this subchapter, the term—
(1) "Secretary" means the Secretary of Commerce, acting through the Economic Development Administration.
(2) "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.
(3) "local government" means any city, county, town, parish, or other political subdivision of a State, and any Indian tribe.
(4) "public works project" includes a project for the transportation and provision of water to a drought-stricken area.

42 USC § 6702. Direct grants; Federal share

(a) The Secretary is authorized to make grants to any State or local government for construction

(including demolition and other site preparation activities), renovation, repair, or other improvement of local public works projects including but not limited to those public works projects of State and local governments for which Federal financial assistance is authorized under provisions of law other than this chapter. In addition the Secretary is authorized to make grants to any State or local government for the completion of plans, specifications, and estimates for local public works projects where either architectural design or preliminary engineering or related planning has already been undertaken and where additional architectural and engineering work or related planning is required to permit construction of the project under this chapter.

(b) The Federal share of any project for which a grant is made under this section shall be 100 per centum of the cost of the project.

42 USC § 6708. Wage standards for laborers and mechanics; enforcement

All laborers and mechanics employed on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary shall not extend any financial assistance under this chapter for such project without first obtaining adequate

assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.

Connecticut General Statute § 31-53.
Construction, alteration or repair of public works projects by state or political subdivision; wage rates; certified payroll. Penalties for violations.

(a) Each contract for the construction, remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project by the state or any of its agents, or by any political subdivision of the state or any of its agents, shall contain the following provision: "The wages paid on an hourly basis to any mechanic, laborer or workman employed upon the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such employee to any employee welfare fund, as defined in subsection (h) of this section, shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution

on behalf of such employees to any such employee welfare fund shall pay to each employee as part of his wages the amount of payment or contribution for his classification on each pay day."

(b) Any person who knowingly or wilfully employs any mechanic, laborer or workman in the construction, remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project for or on behalf of the state or any of its agents, or any political subdivision of the state or any of its agents, at a rate of wage on an hourly basis which is less than the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed, remodeled, refinished, refurbished, rehabilitated, altered or repaired, or who fails to pay the amount of payment or contributions paid or payable on behalf of each such employee to any employee welfare fund, or in lieu thereof to the employee, as provided by subsection (a), shall be fined not less than two thousand five hundred dollars but not more than five thousand dollars for each offense and (1) for the first violation, shall be disqualified from bidding on contracts with the state or any political subdivision until the contractor or subcontractor has made full restitution of the back wages owed to such persons and for an additional six months thereafter and (2) for subsequent violations, shall

be disqualified from bidding on contracts with the state or any political subdivision until the contractor or subcontractor has made full restitution of the back wages owed to such persons and for not less than an additional two years thereafter. In addition, if it is found by the contracting officer representing the state or political subdivision thereof that any mechanic, laborer or workman employed by the contractor or any subcontractor directly on the site for the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as required by this section, the state or contracting political subdivision thereof may (A) by written notice to the contractor, terminate such contractor's right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the state or the contracting political subdivision for any excess costs occasioned the state or the contracting political subdivision thereby or (B) withhold payment of money to the contractor or subcontractor. The contracting department of the state or the political subdivision thereof shall within two days after taking such action notify the Labor Commissioner in writing of the name of the contractor or subcontractor, the project involved, the location of the work, the violations

involved, the date the contract was terminated, and steps taken to collect the required wages.

(c) The Labor Commissioner may make complaint to the proper prosecuting authorities for the violation of any provision of subsection (b).

(d) For the purpose of predetermining the prevailing rate of wage on an hourly basis and the amount of payment or contributions paid or payable on behalf of each employee to any employee welfare fund, as defined in subsection (h), in each town where such contract is to be performed, the Labor Commissioner shall (1) hold a hearing at any required time to determine the prevailing rate of wages on an hourly basis and the amount of payment or contributions paid or payable on behalf of each person to any employee welfare fund, as defined in subsection (h), upon any public work within any specified area, and shall establish classifications of skilled, semiskilled and ordinary labor, or (2) adopt and use such appropriate and applicable prevailing wage rate determinations as have been made by the Secretary of Labor of the United States under the provisions of the Davis-Bacon Act, as amended.

(e) The Labor Commissioner shall determine the prevailing rate of wages on an hourly basis and the amount of payment or contributions paid

or payable on behalf of such employee to any employee welfare fund, as defined in subsection (h), in each locality where any such public work is to be constructed, and the agent empowered to let such contract shall contact the Labor Commissioner, at least ten but not more than twenty days prior to the date such contracts will be advertised for bid, to ascertain the proper rate of wages and amount of employee welfare fund payments or contributions and shall include such rate of wage on an hourly basis and the amount of payment or contributions paid or payable on behalf of each employee to any employee welfare fund, as defined in subsection (h), or in lieu thereof the amount to be paid directly to each employee for such payment or contributions as provided in subsection (a) for all classifications of labor in the proposal for the contract. The rate of wage on an hourly basis and the amount of payment or contributions to any employee welfare fund, as defined in subsection (h), or cash in lieu thereof, as provided in subsection (a), shall, at all times, be considered as the minimum rate for the classification for which it was established. Prior to the award of any contract subject to the provisions of this section, such agent shall certify in writing to the Labor Commissioner the total dollar amount of work to be done in connection with such public works project, regardless of whether such project consists of one or more contracts. Upon the award of any contract subject to the provisions of this section, the contractor to whom such

contract is awarded shall certify, under oath, to the Labor Commissioner the pay scale to be used by such contractor and any of his subcontractors for work to be performed under such contract.

(f) Each employer subject to the provisions of this section or section 31-54 shall (1) keep, maintain and preserve such records relating to the wages and hours worked by each employee and a schedule of the occupation or work classification at which each mechanic, laborer or workman on the project is employed during each work day and week in such manner and form as the Labor Commissioner establishes to assure the proper payments due to such employees or employee welfare funds under this section or section 31-54, and (2) submit monthly to the contracting agency a certified payroll which shall consist of a complete copy of such records accompanied by a statement signed by the employer which indicates that (A) such records are correct; (B) the rate of wages paid to each mechanic, laborer or workman and the amount of payment or contributions paid or payable on behalf of each such employee to any employee welfare fund, as defined in subsection (h) of this section, are not less than the prevailing rate of wages and the amount of payment or contributions paid or payable on behalf of each such employee to any employee welfare fund, as determined by the Labor Commissioner pursuant to subsection (d) of this section, and not less than those required by the contract to be paid; (C) the

employer has complied with the provisions of this section and section 31-54; (D) each such employee is covered by a workers' compensation insurance policy for the duration of his employment, which shall be demonstrated by submitting to the contracting agency the name of the workers' compensation insurance carrier covering each such employee, the effective and expiration dates of each policy and each policy number; (E) the employer does not receive kickbacks, as defined in 41 U.S.C. _ 52, from any employee or employee welfare fund; and (F) pursuant to the provisions of section 53a-157a, the employer is aware that filing a certified payroll which he knows to be false is a class D felony for which the employer may be fined up to five thousand dollars, imprisoned for up to five years, or both. This subsection shall not be construed to prohibit a general contractor from relying on the certification of a lower tier subcontractor, provided the general contractor shall not be exempted from the provisions of section 53a-157a if he knowingly relies upon a subcontractor's false certification.
Notwithstanding the provisions of section 1-210, the certified payroll shall be considered a public record and every person shall have the right to inspect and copy such records in accordance with the provisions of section 1-212. The provisions of sections 31-59(a), 31-59(b), 31-66 and 31-69 which are not inconsistent with the provisions of this section or section 31-54 shall apply to this section. Failing to file a certified payroll

pursuant to subdivision (2) of this subsection is a class D felony for which the employer may be fined up to five thousand dollars, imprisoned for up to five years, or both.

(g) The provisions of this section shall not apply where the total cost of all work to be performed by all contractors and subcontractors in connection with new construction of any public works project is less than four hundred thousand dollars or where the total cost of all work to be performed by all contractors and subcontractors in connection with any remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project is less than one hundred thousand dollars.

(h) As used in this section, section 31-54 and section 31-89a, "employee welfare fund" means any trust fund established by one or more employers and one or more labor organizations or one or more other third parties not affiliated with the employers to provide from moneys in the fund, whether through the purchase of insurance or annuity contracts or otherwise, benefits under an employee welfare plan; provided such term shall not include any such fund where the trustee, or all of the trustees, are subject to supervision by the Commissioner of Banking of this state or any other state or the Comptroller of the Currency of the United States or the Board of Governors of the Federal Reserve System, and

"benefits under an employee welfare plan" means one or more benefits or services under any plan established or maintained for employees or their families or dependents, or for both, including, but not limited to, medical, surgical or hospital care benefits; benefits in the event of sickness, accident, disability or death; benefits in the event of unemployment, or retirement benefits.

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No. 07-1440

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In The

Supreme Court of the United States

STEPHEN BIECHER AND
B&B ELECTRICAL CONTRACTORS, INC.,

Petitioners,

v.

STATE ELECTRICAL WORK EXAMINING BOARD,

Respondent.

On Petition For Writ Of Certiorari
To The Connecticut Appellate Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTION PRESENTED FOR REVIEW

Whether the Connecticut Appellate Court correctly determined that the Connecticut General Statutes and Regulations of Connecticut State Agencies authorized the State of Connecticut Electrical Work Examining Board ("Board") to impose civil penalties against an electrician and his electrical company and to revoke that electrician's license to perform electrical work when the Board determined that: (1) the electrician and his company installed old and/or used electrical wire at a State public works project; and (2) the electrician made false, misleading or deceptive representations regarding his work on certified payroll records he submitted to the Connecticut Department of Labor.

LIST OF PARTIES

Petitioners: Stephen Beecher,
B&B Electrical Contractors, Inc.

Respondent: State of Connecticut Electrical Work Examining Board

The sole respondent to this petition is the "State Electrical Work Examining Board." The caption of the petition for a writ of certiorari erroneously names the respondents as "Commissioner of the Department of Consumer Protection for Connecticut, Edwin Rodriguez, et al." The Court's docket, on the other hand, lists the respondents as "Jerry Farrell, Jr., Commissioner, Department of Consumer Protection for Connecticut, et al." None of these individuals were parties to the decision below. Rather, as is clear from the caption and text of the decisions the petitioners have asked this Court to review, *see* appendix to petitioners' writ, the State Electrical Work Board was the sole defendant in the proceedings below and is, therefore, the proper respondent to the present petition.

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COUNTER-STATEMENT OF THE CASE

This case involves an administrative appeal from two separate decisions and orders rendered by the State of Connecticut Electrical Examining Board ("Board") on February 18, 2005. In those decisions, the Board found that, while working as a subcontractor on a state construction project at a vocational school (hereinafter, "Bullard Havens") in Bridgeport, Connecticut, Stephen Beecher and his company, B&B Electrical Contractors, Inc. (the "Petitioners"), violated numerous provisions of the Connecticut General Statutes and the regulations of the Connecticut Department of Consumer Protection ("DCP") pertaining to electricians.

The Board reached its decisions after a lengthy, independent investigation by DCP. That investigation was prompted by a third-party's claim that B&B Electrical Contractors, Inc. ("B&B") and its President, Stephen Beecher ("Beecher"), had, in violation of contract specifications and generally accepted basic trade practices, installed old, used electrical wire at Bullard Havens. While investigating this initial claim, the Board also discovered that the Petitioners had: (1) permitted unlicensed, unregistered workers to perform electrical work at Bullard Havens; (2) permitted apprentices to perform electrical work at that site without proper supervision; and (3) made false, misleading or deceptive representations regarding the work performed at that site.

During the course of this investigation, and before commencing administrative proceedings before the Board, DCP invited the Petitioners and

their attorney to a number of meetings during which they were given notice of the possibility of administrative sanctions and were afforded an opportunity to show that they were in compliance with all state statutes and regulations governing the performance of electrical work.

Thereafter, on April 15, 2004, DCP commenced administrative proceedings against the Petitioners by filing administrative complaints against both of them with the Board. The first administrative hearing took place on May 14, 2004. Additional administrative hearings were held before the Board on: June 10, 2004, July 15, 2004, September 8, 2004, and September 29, 2004. Both of the Petitioners received proper notice of all such hearings and participated, through counsel.

On February 18, 2005, the Board issued the final decisions and orders that form the basis of the instant administrative appeals. In the Beecher final decision and order (the "Beecher Order"), the Board found that Beecher performed and/or caused to be performed work in an incompetent or negligent manner by failing to install new and/or unused electrical wiring at Bullard Havens. As a result of this particular conduct, the Board: (a) ordered Beecher to immediately discontinue the practice of violating state statutes and agency regulations; (b) revoked Beecher's E-1 Electrical License; and (c) fined Beecher a total of $3,000.00.

In addition to its findings concerning the installation of old and/or used electrical wiring at Bullard Havens, the Board also found that Beecher: (a) caused electrical work to be performed by a

person or persons who were improperly licensed and/or not licensed or registered in accordance with Chapter 393 of the Connecticut General Statutes on the job site located at Bullard Havens; (b) permitted an apprentice or apprentices to perform work while not properly supervised at Bullard Havens; (c) misclassified David Beecher, his brother and an apprentice at the time, as an E-2 electrician on certified payrolls for the job site at Bullard Havens; and (d) misclassified Robert M. Williams, an unlicensed and unregistered worker, as a 4th year apprentice on certified payrolls for the job site at Bullard Havens.

As a result of this conduct, the Board ordered Beecher to pay an additional $1,260,500.00 in civil penalties, consisting of: (a) $1,000.00 for engaging in unethical conduct by falsifying certified payrolls; (b) $1,000.00 for failing to pay prevailing wages; (c) $800,500.00 for misclassifying Robert Williams, an unlicensed and unregistered worker, as a 4th year apprentice on certified payroll records (268 violations: first violation at $1,000.00, second violation at $1,500.00, and each subsequent violation at $3,000.00); (d) $317,500.00 for misclassifying David Beecher as an E2 licensed electrician on certified payroll records (107 violations: first violation at $1,000.00, second violation at $1,500.00 and each subsequent violation at $3,000.00); and (e) $140,500.00 for permitting an apprentice or apprentices to perform work while not properly supervised (48 violations: first violation at $1,000.00, second violation at $1,500.00 and each subsequent violation at $3,000.00).

In the B&B final decision and order (the "B&B Order"), the Board found that B&B caused Williams, who was not licensed or registered in accordance with Chapter 393 of the Connecticut General Statutes, to perform electrical work at Bullard Havens. Based on these findings, the Board concluded that B&B was guilty of 268 counts of causing an unlicensed person to perform electrical work, in violation of Conn. Gen. Stat. § 20-341. As a result, it ordered B&B to: (a) immediately discontinue the practice of causing electrical work to be performed by unlicensed or unregistered persons; and (b) pursuant to Conn. Gen. Stat. § 20-341, pay a civil penalty in the amount of $800,500.00 for 268 separate counts of causing electrical work to be performed by a person not licensed or registered in accordance with Chapter 393 of the Connecticut General Statutes. The $800,500.00 civil penalty consisted of $1,000.00 for the first violation, $1,500.00 for the second violation and $3,000.00 for each subsequent violation (266 violations at $3,000.00 per violation).

Subsequently, on March 18, 2005, the Petitioners appealed the Board's orders to the Connecticut Superior Court, claiming that the Board had violated a number of statutory and constitutional provisions in conducting the administrative proceedings and rendering the penalties contained in the orders. In their administrative appeals and briefs to the Superior Court, neither of the Petitioners argued that any federal statutes precluded or preempted the Board from rendering its final decisions and orders. Rather, the Petitioners argued that: (1) Beecher was deprived of notice and an opportunity to show

compliance prior to the institution of agency proceedings in violation of Conn. Gen. Stat. § 4-182(c); (2) the Board exceeded its statutory authority by relying on settlement agreements and/or administrative findings unrelated to the licensing statutes for which the Board has authority to interpret and enforce; (3) the Board erroneously relied on evidence concerning Beecher's misclassification of employees on B&B's certified payroll records when it decided to revoke Beecher's E-1 license because such misclassifications, as a matter of law, do not constitute "false, misleading or deceptive representations regarding his work" under Conn. Gen. Stat. § 20-334(c); and (4) the civil penalties imposed against Beecher for that same conduct were excessive because there was no evidence that those records involved the performance of electrical work or violated the licensing statutes.

On June 16, 2006, the Superior Court issued its Memorandum of Decision ("MOD"). *See Beecher v. State of Connecticut Dept. of Consumer Protection*, Docket No. HHB CV 054004588, 2006 Conn. Super. LEXIS 1936 (Conn. Super. June 20, 2006). In its MOD, the Superior Court rejected each of these claims. With respect to Beecher's claim that he was denied sufficient notice and opportunity to show compliance prior to the time the Department of Consumer Protection instituted agency to revoke his E-1 license, the Superior Court stated that its "examination of the record reveal[ed] that Beecher was given ample notice of the claimed conduct and conditions that could lead to the revocation of his license." *Id.* at *9. The court further held that "even if there was not strict

compliance with General Statutes § 4-182(c), Beecher has not demonstrated that his substantial rights were prejudiced by any such failure. Thus his claim fails." *Id.* at *12. (citing *TeleTech of Connecticut v. DPUC*, 270 Conn. 778, 813-14, 855 A.2d 174 (2004); *Cornelius v. Department of Banking*, 94 Conn. App. 547, 555, 893 A.2d 472 (2006)).

With respect to Beecher's claim that the Board lacked statutory authority to impose civil penalties against Beecher for making false, misleading or deceptive representations regarding his work, the Superior Court held that there was substantial evidence that Beecher, in fact, misclassified B&B employees on certified payroll records and that the Board had the authority to impose fines for each violation. In particular, the court noted that the Plaintiffs cited no authority for a contrary proposition and failed to "engage in any statutory analysis." *Id.* at *14. Noting that courts must afford "deference to the construction given [a] statute by the agency charged with its enforcement," *id.* at *14-15 (citing *MacDermid, Inc. v. Department of Environmental Protection,* 257 Conn. 128, 138, 778 A.2d 7 (2001)), the trial court was "not persuaded that the Board erred in finding Beecher committed violations in the course of his 'work' in the project. . . ." *Id.* at *15. As a result, it rejected Beecher's claim of error.

The Petitioners subsequently appealed the Superior Court's decision to the Connecticut Appellate Court. Once again, in their appeal to the Connecticut Appellate Court, the Petitioners did not argue that any federal statute preempted the

Board from issuing the administrative orders they now ask this Court to review on that basis. In the Appellate Court, the Petitioners argued that: (1) DCP failed to comply with the notice requirements of Conn. Gen. Stat. § 4-182(c); (2) the Board lacked the statutory authority to revoke Beecher's electrical license for making false, misleading or deceptive representations on certified payroll records in violation of Conn. Gen. Stat. § 20-334(c); and (3) the Board exceeded its statutory authority in that it imposed "excessive" civil penalties against Beecher for making false, misleading or deceptive representations on certified payroll records in violation of Conn. Gen. Stat. § 20-334(c).

On December 4, 2007, the Connecticut Appellate Court released its decision in *Beecher v. State Electrical Examining Board*, 104 Conn. App. 655, 934 A.2d 852 (2007). In that decision, the Appellate Court affirmed the Superior Court's decision dismissing the Petitioners' appeal from the Board's administrative orders. In so doing, the Appellate Court constrained its analysis to the issues raised by the Petitioners in their appeal. Specifically, the Appellate Court held that: the Board did not commit reversible error with respect to the Petitioners' rights to notice and an opportunity to show compliance under Conn. Gen. Stat. § 4-182(c); and the Board had the authority under Conn. Gen. Stat. §§ 20-334(c) and 20-341(b) to impose civil penalties against Beecher for making false, misleading or deceptive representations regarding his work on certified payroll records submitted to the Connecticut Department of Labor. *Id.* at 664-667.

Following the Appellate Court's decision, on December 20, 2007, the Petitioners sought review before the Connecticut Supreme Court. In their application for certification to the Connecticut Supreme Court, the Petitioners argued, for the first time, that the Board's administrative orders should be reviewed because they: (1) constituted an impermissible exercise of jurisdiction over prevailing wage laws that are governed by state labor statutes and the Davis Bacon Act, 40 U.S.C. § 276a, *et seq.*; (2) imposed "oppressive" fines by Board members who are peers of the Petitioners in violation of state and federal antitrust laws; and (3) were preempted by federal workplace safety laws, in particular the Occupational Safety and Health Act ("OSHA"), 29 U.S.C. § 651, *et seq.*

The Board opposed that application on the grounds that the Appellate Court's decision did not implicate any federal statutes and that it only involved the application of well-established principles of statutory construction to Connecticut statutes. On February 18, 2008, the Connecticut Supreme Court denied the Petitioners' application for certification to appeal the Appellate Court's decision. *See Beecher v. State Electrical Examining Board*, 285 Conn. 920, 943 A.2d 1100 (2008).

REASONS FOR DENYING THE WRIT

I. THE PETITION ONLY PRESENTS NARROW ISSUES OF THE INTERPRETATION AND CONSTRUCTION OF STATE STATUTES AND DOES NOT IMPLICATE FEDERAL LAWS OR JURISDICTION.

In their Petition for a Writ of Certiorari, as in their briefs and other submissions below, the Petitioners fail to engage in any substantive analysis whatsoever of how or why the "Davis Bacon Act" or "OSHA" preempt the Board from exercising its statutory authority to discipline licensed electricians for misconduct. In the Beecher Order, the Board imposed civil penalties against the Petitioners, not for having violated "wage laws" or "workplace safety standards," but for violating state statutes designed to protect the public from substandard and negligent electrical work.

First, the Board imposed civil penalties against Beecher for making false, misleading and deceptive representations regarding his work. Specifically, the Board penalized him for each instance in which he misclassified the status of electrical workers on certified payroll records that he was required by law to submit to the state contracting agency on a public works project. As the Connecticut Appellate Court noted in its decision, the Board relies on the accuracy of these payroll records to determine whether contractors comply with mandatory work-site ratios on state public works projects, thereby ensuring that electrical work is not performed by unsupervised

apprentices. *See Beecher*, 104 Conn. App. at 663-64. Contrary to the Petitioners' suggestion in their Writ, therefore, the Board did not penalize Beecher for violating "prevailing wage laws" that the Petitioners argue, without any analysis, are governed exclusively by the Davis Bacon Act.

Second, the Board imposed penalties pursuant to state statutes that the Connecticut Appellate Court correctly determined were designed to protect and promote public safety. Specifically, the Appellate Court accepted the Board's argument that the Connecticut General Statutes authorized the Board to penalize licensed electricians for violating state statutes designed, in part "to provide assurance that apprentices perform their work with proper supervision both for their health and safety and for the health and safety of the general public." *Beecher*, 104 Conn. App. at 663-64. In their Writ, the Petitioners bluntly assert, once again with no analysis of the federal statutes involved, that OSHA and/or the Davis Bacon Act preempt the state statutes that the Connecticut Appellate held authorized the Board to act as it did.

It is well-settled, of course, that states have the authority, under their general police powers, to enact laws and regulations designed to protect public health and safety. Indeed, when considering whether a particular state law is preempted by a federal law, this Court "start[s] with the assumption that the historic police powers of the States were not to be superseded by the Federal Act [in question] unless that was the clear and

manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

In order to demonstrate that a state statute is preempted by federal law, a party must show either that: (1) a federal statute specifically provides that it preempts state laws; (2) Congress intended to "occupy the field" in the subject matter about which the state law is concerned; (3) if Congress has not occupied the field, that the state law in question is naturally preempted to the extent of any conflict with a federal statute; (4) it is impossible for a private party to comply with both state and federal law; or (5) under the circumstances of a particular case, the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *See Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372-73 (2000) (citations omitted).

Here, as below, the Petitioners have made no attempt to show that, in enacting the Davis Bacon Act or OSHA, Congress did, or intended to do, any of the things this Court considers when concluding a particular state statutory scheme is preempted by federal law. Nor do they cite a single decision in which this Court, or any others, have held that either the Davis Bacon Act or OSHA preempt a state statutory licensing scheme designed to encourage licensed tradesmen to conduct themselves in a manner that promotes and protects public health and safety. Absent such a showing, there is no reason to grant review before this Court.

II. THE PETITIONERS DID NOT RAISE, AND NO LOWER COURT HAS PASSED UPON, THE ISSUES THE PETITIONERS ARE ASKING THIS COURT TO REVIEW.

Rule 14.1(g)(i) of the Rules of the Supreme Court of the United States provides that, if review of a state-court judgment is sought, the petition shall specify: "when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by the court(s) below; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears, so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari." *Id.*

In this case, the Petitioners have not, and cannot, comply with Rule 14.1(g)(i) because they did not raise the issue of federal preemption until they sought review before the Connecticut Supreme Court, which under Connecticut practice, is entirely discretionary. As a result, no court has had the opportunity to rule upon the issues the Petitioners are asking this Court to review for the first time. Under these circumstances, the Petitioners cannot show, and do not even attempt to show, as is required by Rule 14.1(g)(i), "that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari." *Id.*

CONCLUSION

For all of the reasons set forth herein, the Petitioners' petition for a writ of certiorari should be denied.

Respectfully submitted,

RESPONDENT
STATE OF CONNECTICUT
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